

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

NOEL NEWELL )  
 ) No.  
Plaintiff, )  
 ) COMPLAINT AND JURY DEMAND  
v. )  
 )  
ZWICKER AND ASSOCIATES, P.C., a )  
Massachusetts Professional )  
Corporation and Donna Smith, )  
a woman, )  
 )  
Defendants. )  
\_\_\_\_\_ )

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. §1692k(d).

2. This action arises out of the defendants' violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter the "FDCPA").<sup>1</sup>

VENUE

3. Venue is proper in this Judicial District.

4. The acts and transactions alleged herein occurred in this Judicial District.

5. The plaintiffs reside in this Judicial District.

6. The defendant, Zwicker and Associates, P.C.

<sup>1</sup> The FDCPA will be referred to with § 1692.

1 ("Zwicker"), transacts business in this Judicial District.

2  
3 7. Defendant Donna Smith ("Smith") is an attorney who  
4 works for Zwicker. Her office is in Milwaukee, Oregon.

5 **PARTIES**

6 8. Plaintiff is a natural person.

7 9. She resides in Whatcom County, Washington.

8 10. She is a "consumer" as that term is defined by §  
9 1692a(3).

10 **ZWICKER**

11 11. Zwicker is a law firm.

12 12. Zwicker is a Massachusetts Professional  
13 Corporation. According to the the Massachusetts Secretary  
14 of State website, it does business at 80 Minutemen Road,  
15 Andover, MA 01810.

16  
17 13. Its registered agent in the state of Washington  
18 is CT Corporation System, 505 Union Avenue, SE Ste 120,  
19 Olympia, WA 98504.

20 14. Zwicker is a "debt collector" as that term is  
21 defined by 15 U.S.C. § 1692a(6).

22 15. Zwicker is licensed as a collection agency by the  
23 state of Washington.

24 16. The principal purpose of Zwicker is the collec-  
25 tion of debts using the mails and telephone.

26 17. Zwicker regularly collects or attempts to col-  
27

28 COMPLAINT AND JURY DEMAND - 2/9

JAMES STURDEVANT  
ATTORNEY AT LAW

BELLINGHAM TOWERS #920  
119 N. COMMERCIAL  
BELLINGHAM, WASHINGTON 98225  
(360) 671-2990  
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lect, directly or indirectly, debts owed or due or asserted to be owed or due another.

18. Zwicker regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another that arose out of transactions in which the money, property or services which are the subject of the transactions are primarily for personal, family or household purposes.

**SMITH**

19. Smith is an attorney.

20. Smith is licensed to practice law in Washington State.

21. Smith works for Zwicker as an attorney.

22. The principal purpose of Smith is the collection of debts using the mails and telephone.

23. Smith regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

24. Smith regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another that arose out of transactions in which the money, property or services which are the subject of the transactions are primarily for personal, family or household purposes.

**FACTUAL ALLEGATIONS**

25. Hereafter "Zwicker" includes Smith.

26. Zwicker by and through Smith sued Newell on behalf of FIA Card Services, N.A. in Whatcom County Superior Court under Case No. 11-2-02048-3.

27. Newell hired James Sturdevant ("Sturdevant") to defend her in the lawsuit.

28. The case was dismissed at arbitration.

29. Zwicker, through Smith, filed a motion for default judgment.

30. As part of the motion, Zwicker served Sturdevant a Note for Motion Docket ("Attorney Note"), a true and correct copy of which is attached as Exhibit "A".

31. The hearing date on the Attorney Note is October 29, 2011.

32. Also, as part of the motion, they served Sturdevant a Declaration of Mailing ("DOM-I"). A true and correct copy of it is attached as Exhibit "B."

33. According to DOM-I, Zwicker mailed Attorney Note to Sturdevant on September 16, 2011.

34. Zwicker mailed a Note for Motion Docket to the Whatcom County Superior Court ("Whatcom Note"). A true and correct copy of it is attached as Exhibit "C."

35. Also, as part of the motion, they mailed the What-

1  
2 com County Superior Court a Declaration of Mailing ("DOM-  
3 II"). A true and correct copy of it is attached as Exhibit  
4 "D."

5 36. The hearing date in the Whatcom Note is October  
6 28, 2011.

7 37. The date in the Whatcom Note appears to have been  
8 whited-out, and the hearing date of October 28, 2011 is  
9 handwritten in.

10 38. Zwicker did not mail a copy of the Whatcom Note  
11 with the new date to Sturdevant.

12 39. Sturdevant learned of the Whatcom Note when he  
13 researched the case number on the Whatcom County Superior  
14 Court website on October 28, 2011.

15 40. He filed a Response to Plaintiff's Motion for De-  
16 fault Judgment, a true and correct copy of which is at-  
17 tached as Exhibit "E."

18 41. Sturdevant appeared at the hearing on October 28,  
19 2011 and filed an answer.

20 42. On October 28, 2011, he wrote Zwicker a letter  
21 asking why he had not been sent a copy of the Whatcom No-  
22 tice. A true and correct copy of the letter is attached as  
23 Exhibit "F."

24 43. Zwicker never responded to the letter.

25 44.

**VIOLATIONS OF WASHINGTON STATE RULES**

44. Zwicker's failure to serve a copy of the Whatcom Note to Sturdevant as stated in DOM-II violated Wash. Superior Court Rules ("CR") in general and more particularly the following:

A. Zwicker's failure to serve violated CR 5(a) & (b), which required that it serve the Whatcom Note on Sturdevant according to the terms of the rule.

B. Zwicker's failure to serve the Whatcom Note violated CR 6(d), which required Zwicker to give at least five days notice of the hearing date to Sturdevant.

C. Zwicker's failure to serve the Whatcom Note on Sturdevant violated CR 7(b), which describes the rules for motions.

D. Zwicker's failure to serve the Whatcom Note on Sturdevant violated CR 11(a).

45. Zwicker, in its failure to mail the Whatcom Note to Sturdevant, violated the Washington State Rules of Professional Responsibility ("RPC") in general and more particularly the following:

A. Zwicker's failure to serve the Whatcom Note on Sturdevant violated RPC 3.3(a)(1), for Zwicker in DOM-II made a false statement to the Whatcom County Superior Court that it had served the Whatcom Note on Sturdevant.

COMPLAINT AND JURY DEMAND - 6/9

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1  
2 B. Zwicker's failure to serve the Whatcom Note on  
3 Sturdevant violated RCP 3.4 because changing the hearing  
4 date on the Whatcom Note without serving it on Sturdevant  
5 was not fair to Newell and her attorney.

6 **FDCPA VIOLATIONS**

7 46. Zwicker's failure to serve the Whatcom Note on  
8 Sturdevant violated § 1692e because Zwicker used a false,  
9 deceptive or misleading representation or means in connec-  
10 tion with the collection of the debt.

11 47. Zwicker's failure to serve the Whatcom Note on  
12 Sturdevant violated § 1692e(5) because Zwicker threatened  
13 to take an action it could not legally take: It could not  
14 properly bring the motion for default judgment before the  
15 Whatcom County Superior Court, without serving the Whatcom  
16 Notice on Sturdevant. October 29, 2011 is not October 28,  
17 2011.

18 48. Zwicker's failure to serve the Whatcom Note on  
19 Sturdevant violated § 1692e(10) because Zwicker used a  
20 false representation and deceptive means to collect or at-  
21 tempt to collect the FIA debt: It could not properly bring  
22 the motion for default judgment before the Whatcom County  
23 Superior Court without serving the Whatcom Notice on  
24 Sturdevant. October 29, 2011 is not October 28, 2011.

25 49. Zwicker's failure to serve the Whatcom Note on  
26  
27

28 COMPLAINT AND JURY DEMAND - 7/9

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1  
2 Sturdevant violated § 1692f because its failure to serve  
3 the Whatcom Notice on Sturdevant and then go forward with  
4 the hearing was an unfair or unconscionable means to col-  
5 lect or attempt to collect the debt.

6 50. The FDCPA is a "strict liability statute," and  
7 Plaintiff need only "show one violation of its provisions  
8 to be entitled to judgment in her favor. *"Ellis v. Cohen &*  
9 *Slamowitz, LLP*, 701 F. Supp. 2d 215, 219 (N.D.N.Y. 2010).

10 51. As a consequence of the Zwicker's failure to  
11 serve the Whatcom Note on Sturdevant, Plaintiff is entitled  
12 to damages pursuant to FDCPA 1692k(a).  
13

14  
15 **COUNT I, FDCPA VIOLATION**

16 52. The previous paragraphs are incorporated in this  
17 Count as if set forth in full.

18 53. The act(s) and omission(s) of the defendants con-  
19 stitute a violation of §§ 1692e preface, e(5), (10), &  
20 1692f preface.

21 54. Pursuant to § 1692k(a), Plaintiff is entitled to  
22 damages, reasonable attorney's fees and costs.

23 **JURY TRIAL DEMAND**

24 55. Plaintiff is entitled to and hereby demands a  
25 trial by jury.  
26

27 **PRAYER**

28 COMPLAINT AND JURY DEMAND - 8/9

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1  
2       **WHEREFORE**, Plaintiff prays that the Court grants the  
3 following:

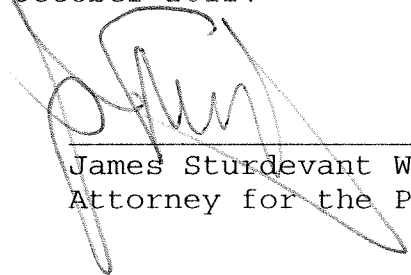
4       1. A finding that the defendants violated the FDCPA  
5 and/or an admission from the defendants that they violated  
6 the FDCPA.

7       2. Damages pursuant to 15 U.S.C. § 1692k(a).

8       3. Reasonable attorney's fees and costs pursuant to  
9 15 U.S.C. § 1692k(a)(3).

10       4. Such other and further relief as the Court deems  
11 just and proper.

12       DATED this 22nd day of October 2012.

13  
14  
15         
16       James Sturdevant WSBA #8016  
17       Attorney for the Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Received

SEP 19 2011

## SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

FIA CARD SERVICES, N.A.,

Plaintiff/Petitioner,

vs.

NOEL NEWELL

Defendant/Respondent.

NO. 11-2-02048-3

ASSIGNED JUDGE: Judge Ira Uhrig

## NOTE FOR MOTION DOCKET (NTMTDK)

- ☒ Civil Motion Calendar  
☐ Domestic Calendar  
☐ Revision of Commissioner Ruling  
☐ Special Set

(Use separate sheet for each noting)

## NOTE FOR MOTION DOCKET

Please take note that the issue in this case will be heard on the date set out in the margin and the clerk is requested to note the same on the motion docket for that day, subject to the confirmation rule.

OCTOBER 29, 2011 @ 1:30 PM

Date and Time of Hearing

Nature of Hearing:

MOTION FOR DEFAULT JUDGMENT - DEFENDANT HAS  
HAS APPEARED

## CERTIFICATE OF MAILING:

I certify that I mailed a copy of this document to the parties listed below, postage prepaid on the 16 day of September, 2011

*Stephanie Simon*  
By: Signature

DATE SUBMITTED: SEP 16 2011  
SUBMITTED BY:

Signature of Lawyer or Party

Donna Smith #37836

Print or Type Name; WSBA # if Attorney

Address: 10824 SE OAK STREET, PMB 401

MILWAUKIE, OR 97222

Telephone

503-786-6119

If Attorney, Party Represented:

oPetitioner/Plaintiff FIA CARD SERVICES, N.A.

oRespondent/Defendant

NAME (below)

JAMES STURDEVANT WSBA: \_\_\_\_\_

ADDRESS:

119 NORTH COMMERCIAL STREET, #920

BELLINGHAM, WA 98225

Attorney for: ☐ Petitioner/Plaintiff ☒ Respondent/Defendant

NAME (below)

WSBA: \_\_\_\_\_

ADDRESS:

Attorney for: ☐ Petitioner/Plaintiff ☐ Respondent/Defendant

[Whatcom Note for Motion Docket]

EXHIBIT No. A

SUPERIOR COURT OF WASHINGTON  
FOR WHATCOM COUNTY

FIA CARD SERVICES, N.A.,

Plaintiff,

vs.

NOEL NEWELL,

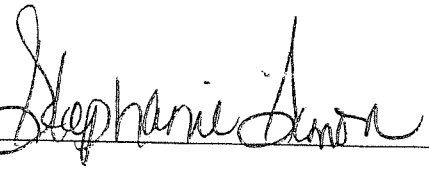
Defendant

Case No.: 11-2-02048-3

DECLARATION OF MAILING: Note for Motion  
Docket / Notice of Hearing, Motion for Order  
of Default, and Proposed Order of Default  
and Default Judgment

The undersigned hereby certifies, under penalty of perjury of the laws of the State of Washington, that the Note for Motion Docket / Notice of Hearing, Motion for Order of Default, and Proposed Order of Default and Default Judgment have been served on the Defendant or Counsel for Defendant set forth below, by placing in the US Mail, postage prepaid, from Milwaukie Oregon on this date: SEP 16 2011.

Sent to: JAMES STURDEVANT  
119 NORTH COMMERCIAL ST., #920  
BELLINGHAM, WA 98225

By:   
Litigation Assistant

Declaration of Mailing - 1

Zwicker & Associates  
10824 SE Oak PMB 401  
Milwaukie, OR 97222  
(503)-786-6119; FAX 503-786-6130  
TOLL FREE 877-204-9425

**EXHIBIT No. B**

FILED  
 2012 SEP 19 AM 12:13  
 CLERK OF COURT  
 03

# SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

<p>FIA CARD SERVICES, N.A.,          Plaintiff/Petitioner,          vs.          NOEL NEWELL          Defendant/Respondent.</p>	<p>NO. <u>11-2-02048-3</u></p> <p>ASSIGNED JUDGE: <u>Judge Ira Uhrig</u></p> <p>NOTE FOR MOTION DOCKET (NTMTDK)  <input checked="" type="checkbox"/> Civil Motion Calendar  <input type="checkbox"/> Domestic Calendar  <input type="checkbox"/> Revision of Commissioner Ruling  <input type="checkbox"/> Special Set          (Use separate sheet for each noting)</p>
<p>NOTE FOR MOTION DOCKET</p> <p>Please take note that the issue in this case will be heard on the date set out in the margin and the clerk is requested to note the same on the motion docket for that day, <u>subject to the confirmation rule.</u></p>	<p><u>10-28-11</u> @ 1:30 PM <u>C1</u>          Date and Time of Hearing</p> <p>Nature of Hearing:  <u>MOTION FOR DEFAULT JUDGMENT - DEFENDANT HAS</u>  <u>HAS APPEARED</u></p>
<p>CERTIFICATE OF MAILING:</p> <p>I certify that I mailed a copy of this document to the parties listed below, postage prepaid on the <u>16</u> day of <u>September</u>, 20<u>11</u></p> <p><u>Stephanie Simon</u>          By: Signature</p>	<p>DATE SUBMITTED: <u>SEP 18 2011</u>          SUBMITTED BY: <u>[Signature]</u></p> <p>Signature of Lawyer or Party  <u>Donna Smith #37836</u>          Print or Type Name; WSBA # if Attorney          Address: <u>10824 SE OAK STREET, PMB 401</u>  <u>MILWAUKIE, OR 97222</u></p> <p>Telephone  <u>503-786-6119</u></p> <p>If Attorney, Party Represented:          oPetitioner/Plaintiff <u>FIA CARD SERVICES, N.A.</u>          oRespondent/Defendant</p>
<p>NAME (below)  <u>JAMES STURDEVANT</u> WSBA: _____</p> <p>ADDRESS:  <u>119 NORTH COMMERCIAL STREET, #920</u>  <u>BELLINGHAM, WA 98225</u></p> <p>Attorney for: <input type="checkbox"/> Petitioner/Plaintiff <input checked="" type="checkbox"/> Respondent/Defendant</p>	<p>NAME (below)          _____ WSBA: _____</p> <p>ADDRESS:          _____</p> <p>Attorney for: <input type="checkbox"/> Petitioner/Plaintiff <input type="checkbox"/> Respondent/Defendant</p>

[Whatcom Note for Motion Docket]

EXHIBIT No. C

FILED  
2012-10-13 TIME: 13  
CLERK  
BY: [Signature]

SUPERIOR COURT OF WASHINGTON  
FOR WHATCOM COUNTY

FIA CARD SERVICES, N.A.,  
Plaintiff,  
vs.  
NOEL NEWELL,  
Defendant

) Case No.: 11-2-02048-3  
)  
) DECLARATION OF MAILING: Note for Motion  
) Docket / Notice of Hearing, Motion for Order  
) of Default, and Proposed Order of Default  
) and Default Judgment  
)  
)  
)  
)

The undersigned hereby certifies, under penalty of perjury of the laws of the State of Washington, that the Note for Motion Docket / Notice of Hearing, Motion for Order of Default, and Proposed Order of Default and Default Judgment have been served on the Defendant or Counsel for Defendant set forth below, by placing in the US Mail, postage prepaid, from Milwaukie Oregon on this date: SEP 16 2011.

Sent to: JAMES STURDEVANT  
119 NORTH COMMERCIAL ST., #920  
BELLINGHAM, WA 98225

By: [Signature]  
Litigation Assistant

Declaration of Mailing - 1

EXHIBIT No. D

Zwicker & Associates  
10824 SE Oak PMB 401  
Milwaukie, OR 97222  
(503)-786-6119; FAX 503-786-6130  
TOLL FREE 877-204-9425

10

FILED  
COUNTY CLERK  
2011 OCT 28 AM 11:23  
WHATCOM COUNTY  
WASHINGTON  
BY \_\_\_\_\_

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR  
WHATCOM COUNTY

FIA CARD SERVICES, N.A.,	)	
	)	No. 11-2-02048-3
Plaintiff,	)	
	)	RESPONSE TO PLAINTIFF'S
v.	)	MOTION FOR DEFAULT JUDGMENT
	)	
NOEL NEWELL,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW the defendant, Noel Newell, by and through her attorney, James Sturdevant, and responds to the Plaintiff's Motion for Default Judgment. The Note for Motion Calendar that I received stated that the hearing date was October 29, 2011 at 1:30 p.m. Since the date was incorrect, the motion was not properly before this Court and I did not file an answer. I see now from checking on-line that someone has changed the hearing date from October 29, 2011 to October 28, 2011. I was never notified of the date change. Such a date change without notice to opposing counsel is irregular. I am filing a general denial herewith. If I had been notified of the date change, I would

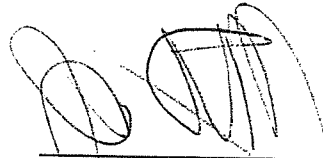
RESPONSE TO PLAINTIFF'S MOTION  
FOR DEFAULT JUDGMENT - 1/2

JAMES STURDEVANT  
ATTORNEY AT LAW  
BELLINGHAM TOWERS #920  
119 N. COMMERCIAL  
BELLINGHAM, WASHINGTON 98225  
(360) 671-2990  
E-MAIL: sturde@openaccess.org

EXHIBIT No. E

1  
2 have filed a comprehensive and detailed answer and not the  
3 mere general denial.

4 DATED this 28th day of October 2011.

5  
6  
7 

8 James Sturdevant WSBA #8016  
9 Attorney for Defendant

10  
11 CERTIFICATE OF SERVICE

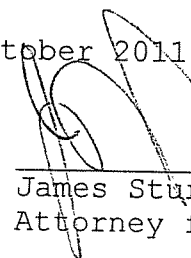
12 I hereby certify that on October 28, 2011, I served a true  
13 and complete copy of the foregoing Response to Plaintiff's  
14 Motion for Default Judgment; and Answer on:

15 Donna J. Smith  
16 Zwicker & Associates, P.C.  
17 10824 SE Oak PMB 401  
18 Milwaukie, OR 97222

19 dsmith@zwickerpc.com

20 [x] Via E-Mail

21 Dated this 28th day of October 2011.

22 

23 James Sturdevant #8016  
24 Attorney for Defendant

25  
26  
27 RESPONSE TO PLAINTIFF'S MOTION  
28 FOR DEFAULT JUDGMENT - 2/2

JAMES STURDEVANT  
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119 North Commercial Street #920  
Bellingham, WA 98225  
Telephone 1360-671-2990  
Internet: sturde@openaccess.org

VIA U.S. First-Class Postage-Prepaid Mail and Electronic Mail

October 28, 2011

Donna Smith  
Zwicker & Associates, P.C.  
Attorneys at Law Oregon Office  
10824 SE Oak, PMB 401  
Milwaukie, OR 97222  
[dsmith@zwickerpc.com](mailto:dsmith@zwickerpc.com)

Re: *FIA Card Services, N.A. vs. Noel Newell*;  
Case No. 11-2 -02048-3

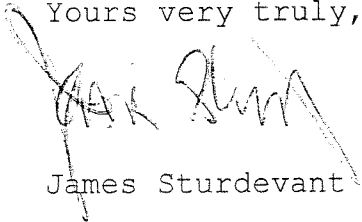
Dear Madam:

I was surprised to learn that the date for the hearing on the Motion for Default Judgment on the above-referenced case was changed from October 29, 2011 at 1:30 p.m. to October 28, 2011 at 1:30 p.m. Could you please tell me how and when you notified me of the hearing date change.

Enclosed is a Response to the Motion for Default Judgment; Answer; and Motion and Affidavit of Prejudice.

With best regards,

Yours very truly,

  
James Sturdevant

cc: Noel Newell

JS:gf  
Encls.

**EXHIBIT No. F**